

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

MICHAEL S. KENNEDY, on behalf of himself and  
all others similarly situated,

Plaintiff(s),

-against-

PORTFOLIO RECOVERY ASSOCIATES, LLC.,  
and JOHN DOES 1-25,

Defendant.

Civil Case No.: \_\_\_\_\_

**CIVIL ACTION**

**CLASS ACTION COMPLAINT  
AND  
JURY TRIAL DEMAND**

Plaintiff, Michael S. Kennedy, on behalf of himself and all others similarly situated (hereinafter "Plaintiff") by and through his undersigned attorney, alleges against the above-named Defendants, Portfolio Recovery Associates, LLC, (hereinafter "Defendant") and JOHN DOES 1-25, their employees, agents, and successors the following:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant's violation of 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331. This is an action for violations of 15 U.S.C. § 1692 *et seq.*

3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because the acts and transactions that give rise to this action occurred, in substantial part, in this district.

### **DEFINITIONS**

4. As used in reference to the FDCPA, the terms “creditor,” “consumer,” “debt,” and “debt collector” are defined in § 803 of the FDCPA and 15 U.S.C. § 1692a.

### **PARTIES**

5. The FDCPA, 15 U.S.C. § 1692 *et seq.*, which prohibits certain debt collection practices provides for the initiation of court proceedings to enjoin violations of the FDCPA and to secure such equitable relief as may be appropriate in each case.

6. Plaintiff is a natural person and a resident of the, County of Union, State of New Jersey, and is a “Consumer” as defined by 15 U.S.C. § 1692a(3).

7. Defendant is a foreign company with its executive offices located at 140 Corporate Boulevard, Norfolk, VA 23502. Defendant is primarily in the business of collecting debt allegedly due to another, and is therefore a “Debt Collector,” as that term is defined by 15 U.S.C. § 1692a(6).

### **CLASS ACTION ALLEGATIONS**

8. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter “FRCP”), on behalf of himself and all New Jersey consumers and their successors in interest (the “Class”), who have received debt collection letters and/or notices from the Defendant which are in violation of the FDCPA, as described in this Complaint.

9. This Action is properly maintained as a class action. The Class consists of:

- All New Jersey consumers who received collection letters and/or notices from the Defendant that contained at least one of the alleged violations arising from the Defendant's violation of 15 U.S.C. § 1692 *et seq.*
- The Class period begins one year to the filing of this Action.

10. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:

- Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who have received debt collection letters and/or notices from the Defendant that violate specific provisions of the FDCPA. Plaintiff is complaining of a standard form letter and/or notice that is sent to hundreds of persons;
- There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
  - a. Whether the defendant violated various provisions of the FDCPA including but not limited to: 15 U.S.C. §1692c(c).
  - b. Whether Plaintiff and the Class have been injured by the Defendant's conduct;
  - c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendant's wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive relief.

- Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class.
- Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.
- A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as monetary damages. If Defendant's conduct is allowed to proceed without remedy they will continue to reap and retain the proceeds of their ill-gotten gains.

- Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

### **STATEMENT OF FACTS**

11. On or about July 10, 2010, Defendant caused to be delivered to Plaintiff a collection letter addressed to Plaintiff. Upon receipt Plaintiff read said letter. The letter demanded payment of a debt allegedly owed by Plaintiff to Sherman Acquisition LLC/CitiFinanical Inc.. A copy of said letter is annexed hereto as Exhibit A.

12. On August 2, 2010, Plaintiff, through the undersigned attorney, notified Defendant in writing (via facsimile, Certified Mail, and Regular Mail), that he disputed the alleged debt and demanded verification. A copy of said letter is annexed hereto as Exhibit B.

13. In said letter of August 2, 2010, the undersigned attorney, further instructed Defendant to, “immediately, *Cease and Desist* all collection efforts and communications with Mr. Kennedy.” Exhibit B.

14. On or about September 29, 2010, Defendant caused to mailed to Plaintiff a letter addressed to Plaintiff. Upon receipt Plaintiff read said letter. The letter demanded payment of a debt allegedly owed by Plaintiff to Sherman Acquisition LLC/CitiFinanical Inc.. A copy of said letter is annexed hereto as Exhibit C.

### **COUNT I**

#### **FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 VIOLATION OF 15 U.S.C. § 1692c(c)**

15. Plaintiff repeats the allegations contained in paragraphs 1 through 14 as if the same were set forth at length.

16. 1692c(c) of the FDCPA states:

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt...

17. Defendant violated Section 1692c(c) of the FDCPA by mailing a second letter to Plaintiff, in an attempt to collect the alleged debt, after receiving written communication to Cease and Desist all collection efforts and communications. Exhibit B.

18. By reason thereof, Plaintiff has sustained damages when Defendant sent a second letter to Plaintiff in an attempt to collect the alleged debt, after receiving written communication to Cease and Desist all collection efforts and communication.

19. By reason thereof, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduct violated Section 1692c(c) of the FDCPA, actual damages, statutory damages, costs and attorneys' fees.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

(a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative and, Joseph K. Jones, Esq., as Class Counsel;

(b) Issuing a preliminary and/or permanent injunction restraining Defendant, their employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;

(c) Issuing a declaratory Order requiring Defendant to make corrective disclosures;

(d) Awarding Plaintiff and the Class statutory damages;

(e) Awarding Plaintiff costs of this Action, including reasonable attorney's fees and expenses; and

(f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: Fairfield, New Jersey  
October 14, 2010

s/ Joseph K. Jones  
Joseph K. Jones (JJ5509)  
Law Offices of Joseph K. Jones, LLC  
375 Passaic Avenue, Suite 100  
Fairfield, New Jersey 07004  
(973) 227-5900 telephone  
(973) 244-0019 facsimile  
jkj@legaljones.com

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

s/ Joseph K. Jones  
Joseph K. Jones (JJ5509)

**CERTIFICATION PURSUANT TO LOCAL RULE 11.2**

I, Joseph K. Jones, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, that the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: October 14, 2010

s/ Joseph K. Jones  
Joseph K. Jones (JJ5509)



# Exhibit

A



Portfolio Recovery Associates, LLC

We're giving debt collection a good name.

July 10, 2010

Dear MICHEAL KENNEDY:

Re: Verification Information Concerning PRA Account/Reference No.: B2009080125922  
SHERMAN ACQUISITION LLC/CITIFINANCIAL INC.

The following information is being provided in response to your recent communication concerning the account referenced above. Account Number B2009080125922 and its proceeds were sold, assigned and transferred by the Seller to Portfolio Recovery Associates, LLC on 05/27/2008. At the time of the sale, the Seller provided an electronic file of its business records concerning this account. According to the Seller's records, there was due and payable from MICHEAL KENNEDY to the Seller in the sum of \$7499.97 with respect to the account, as of 05/27/2008, there being no known un-credited payments, counterclaims, or offsets against this account at the date of its sale.

Here is a summary of additional information listed in the electronic file for this account:

Account holder's Name Provided By Seller:	MICHEAL KENNEDY
Account holder's Last 4 Digits of SSN:	4934
Date Account Opened Provided by Seller:	11/29/2006
Balance at date of PRA purchase:	\$7499.97
Interest accrued since the date of purchase or last payment to PRA:	\$917.26
Costs and Other Fees:	\$0

\*Total Balance Due as of the Date of this Letter: \*\$8417.23

Please contact us if you would like to receive a payment history of payments that have posted to this account since our company purchased this account.

**Contact us toll-free at 1-800-772-1413 to discuss this account.**

**Hours of Operation (EST): 7:30 AM to 11 PM Mon.-Fri., 8 AM to 5 PM Sat., & 2 PM to 9 PM Sun.**

If you wish to dispute this account, please send written documentation describing the nature of your dispute and any information or materials that may be helpful to our investigation so this dispute may be investigated in a timely manner. Please send all documentation related to disputes to the following address: PRA Disputes Department, 140 Corporate Blvd., Norfolk, VA 23502. If you wish to dispute this account due to identity theft or fraud, please follow the attached instructions for filing disputes due to identity theft or fraud. Please note that if we receive no information or documentation describing the details of your dispute by 7/30/2010, we may then terminate the investigation related to this account due to lack of clarification of the nature of the dispute.

\*Interest continues to accrue on this account and will accrue until the account is satisfied, unless interest has been suspended. The above balance includes interest as of the date of this letter.

This letter is from a debt collector.

**Notice: See Reverse Side for Important Information**

\*\*\*Please send this coupon with all correspondence.\*\*\*

Dept 922  
PO BOX 4111  
Concord, CA 94524



Address Service Requested

#BWNFTZF #PRA5392673410074#



MICHEAL KENNEDY  
105 NEW ENGLAND AVE APT K4  
SUMMIT NJ 07901-1812

D4  
PORTFOLIO RECOVERY ASSOCIATES LLC  
PRA DISPUTES DEPARTMENT  
140 CORPORATE BOULEVARD  
NORFOLK VA 23502

# Exhibit

# B

Law Offices of  
**Joseph K. Jones, LLC**  
Attorney at Law

375 Passaic Avenue  
Suite 100  
Fairfield, New Jersey 07004  
973-227-5900  
facsimile 973-244-0019  
jkj@legaljones.com

Admitted to Practice  
New York  
New Jersey  
United States District Court, Eastern District of New York  
United States District Court, Southern District of New York  
United States District Court, New Jersey  
Connecticut

110 Wall Street  
11<sup>th</sup> Floor  
New York, NY 10005  
212-709-8301

August 2, 2010

Via Facsimile 757-321-2519, Certified 7003 1680 0006 9718 5458, and First Class Mail  
Portfolio Recovery Associates, LLC  
PRA Disputes Department  
140 Corporate Boulevard  
Norfolk, VA 23502

Re: **Michael Kennedy**  
**Reference No.: B2009080125922**

To Whom It May Concern:

This firm has been retained to represent the interest of Michael Kennedy, relative to the above-referenced matter.

Pursuant to 15 U.S.C. §1692c(c), you are hereby instructed to immediately *Cease and Desist* all collection efforts and communications with Mr. Kennedy

As provided for under 15 U.S.C. §1692g(b), my client disputes the validity of the alleged debt and demands a verification, a full accounting, and the name and address of the original creditor. Kindly forward all such information to our New Jersey office.

Your anticipated cooperation in this matter is appreciated.

Very truly yours,  
LAW OFFICES OF JOSEPH K. JONES, LLC

Joseph K. Jones  
Attorney at Law

JKJ: ap  
cc: Michael Kennedy

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <u>Silvia P. Holley</u>	
1. Article Addressed to:  Portfolio Recovery Associates, LLC PRA Disputes Department 140 Corporate Boulevard Norfolk, VA 23502		B. Received by (Printed Name) <u>Silvia P. Holley</u> Date of Delivery <u>AUG 4 2010</u>	
2. Article Number (Transfer from service label) <u>7003 1680 0006 9718 5458</u>		D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		Domestic Return Receipt	
102595-02-M-1540		3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes			

U.S. Postal Service™	
<b>CERTIFIED MAIL™ RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ <u>0.44</u>
Certified Fee	<u>2.80</u>
Return Receipt Fee (Endorsement Required)	<u>2.34</u>
Restricted Delivery Fee (Endorsement Required)	<u>5.54</u>
Postmark <u>AUG 4 2010</u>	
Portfolio Recovery Associates, LLC PRA Disputes Department 140 Corporate Boulevard Norfolk, VA 23502	
Instructions	

\* \* \* Communication Result Report ( Aug. 2. 2010 2:52PM ) \* \* \*

1}

Date/Time: Aug. 2. 2010 2:52PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
2857 Memory TX	17573212519	P. 1	OK	

Reason for error  
 m. 1) Hang up or line fail  
 m. 3) No answer  
 m. 5) Exceeded max. E-mail size

E. 2) Busy  
 E. 4) No facsimile connection

Law Offices of  
**Joseph K. Jones, LLC**  
 Attorney at Law

375 Passaic Avenue  
 Suite 100  
 Fairfield, New Jersey 07004  
 978-227-5900  
 facsimile 978-244-0019  
 jkj@jkgajones.com

Admitted to Practice  
 New York  
 New Jersey  
 United States District Court, Eastern District of New York  
 United States District Court, Southern District of New York  
 United States District Court, New Jersey  
 Connecticut

110 Wall Street  
 11<sup>th</sup> Floor  
 New York, NY 10005  
 212-769-8301

August 2, 2010

Via Facsimile 202-391-3510, Certified Mail 1600 606 9719 5c52, and First Class Mail  
 PortoRico Recovery Associates, LLC  
 PRA Disputes Department  
 140 Corporate Boulevard  
 Norfolk, VA 23502

Re: Michael Kennedy  
 Reference No.: B2009030125922

To Whom It May Concern:

This firm has been retained to represent the interest of Michael Kennedy, relative to the above-referenced matter.

Pursuant to 15 U.S.C. §1692c(c), you are hereby instructed to immediately Cease and Desist all collection efforts and communications with Mr. Kennedy

As provided for under 15 U.S.C. §1692g(b), my client disputes the validity of the alleged debt and demands a verification, a full accounting, and the name and address of the original creditor. Kindly forward all such information to our New Jersey office.

Your anticipated cooperation in this matter is appreciated.

Very truly yours,  
 LAW OFFICES OF JOSEPH K. JONES, LLC

Joseph K. Jones  
 Attorney at Law

JKJ:sp  
 cc: Michael Kennedy

# Exhibit

C



PO Box 1259  
Oaks, PA 19456



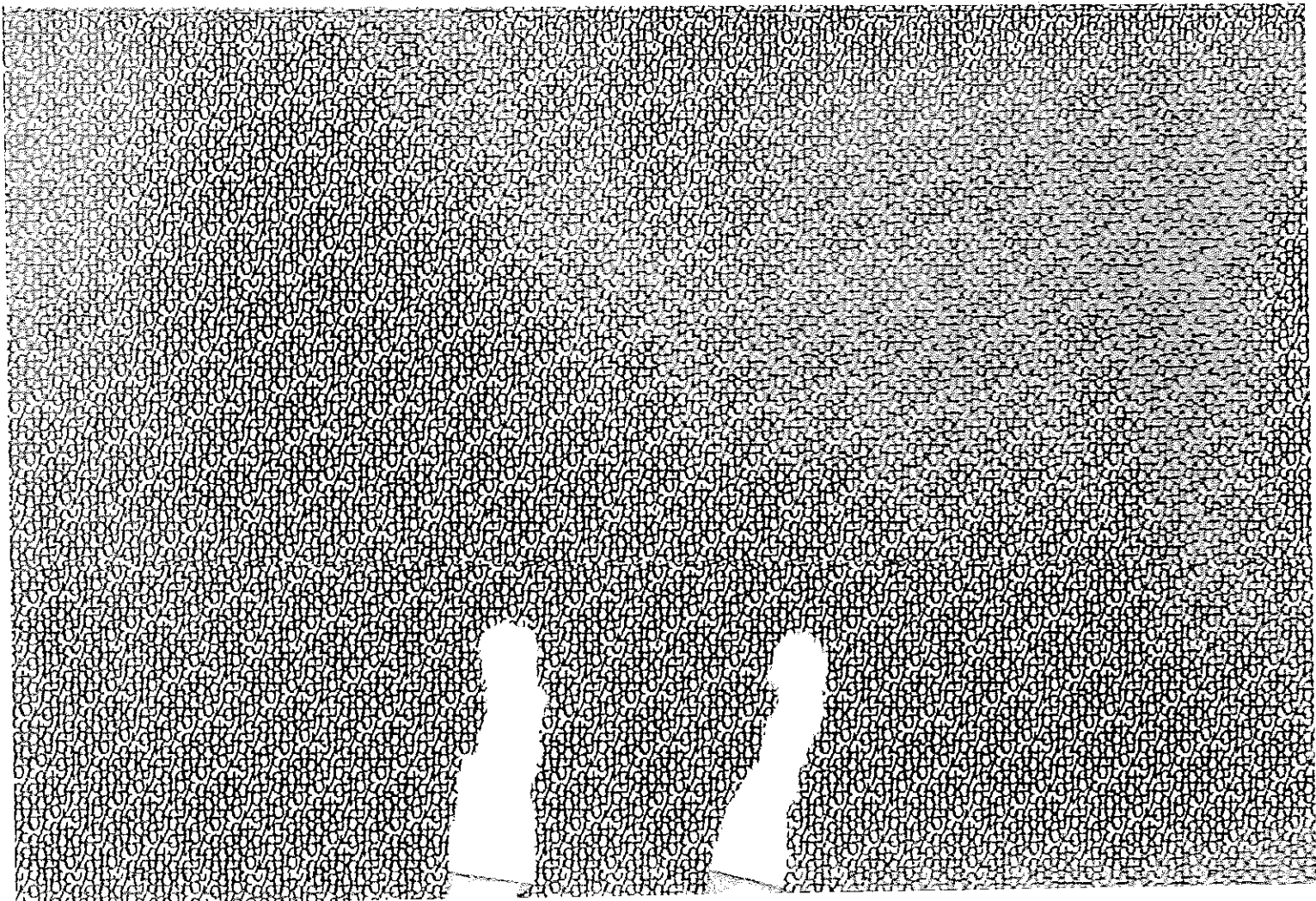
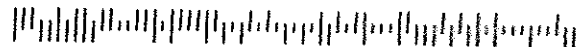
PRE-SORTED  
US POSTAGE  
PAID  
PSC

06

U0186082-47M2-3

MICHEAL KENNEDY  
105 NEW ENGLAND AVE APT K4  
SUMMIT NJ 07901-1812

123 1JXYP1 07901







Portfolio Recovery Associates, LLC.  
We're giving debt collection a good name.

September 29, 2010

SHERMAN ACQUISITION LLC

\*BALANCE: \$8,519.55

Account/Reference No: B2009080125922

### ***Your Fall Savings Plan***

PRA wants to help resolve your account before 2011 begins. We are offering you big savings of up to **\$1,704.55**. Simply complete one of the plans below and this debt will be a thing of the past.

Single Payment Option:	6 Month Payment Plan:	Balance in Full Payment Plan:
<ul style="list-style-type: none"> <li>• Take <b>\$1,704.55</b> off the balance</li> <li>• Pay us <b>\$6,815.00</b></li> <li>• Your account will be considered "Settled in Full" after we post your payment</li> <li>• If you satisfy the terms of this settlement offer, no further interest will be charged to you</li> </ul>	<ul style="list-style-type: none"> <li>• Take <b>\$1,259.55</b> off the balance</li> <li>• Pay over 6 equal monthly installments of <b>\$1,210.00</b></li> <li>• Your account will be considered "Settled in Full" after we post your final payment</li> <li>• If you satisfy the terms of this settlement offer, no further interest will be charged to you</li> </ul>	<ul style="list-style-type: none"> <li>• Pay as little as <b>\$255.00</b> per month</li> <li>• Your account will be considered "Paid in Full" once the account reaches a zero balance</li> </ul>

**Your first payment is due no later than 10/29/2010**

***Get started and take advantage of one of these options to move you closer to debt reduction and less financial worry!***

Mail:	Call:	Online:
<b>Mail all checks and payments to:</b>  Portfolio Recovery Associates, LLC P.O. Box 12914 Norfolk, VA 23541	<b>Call Toll-Free at 1-800-772-1413</b> to discuss payment arrangements. Let us prove how committed we are to working with you!	<b>Pay us online at:</b> <a href="http://www.portfoliorecovery.com">www.portfoliorecovery.com</a>

***\*We are not obligated to renew this offer. Interest continues to accrue on this account until the account is satisfied, unless interest has been suspended. The above balance includes interest as of the date of this letter. You may contact us to obtain an exact payoff amount for a future date.***

**Hours of Operation (EST)** 730 AM to 11 PM Mon.-Fri., 8 AM to 5 PM Sat., 2 PM to 9 PM Sun.

**Company Address:** Portfolio Recovery Associates, LLC, 120 Corporate Boulevard, Norfolk, VA 23502

**Disputes Correspondence Address:** 140 Corporate Boulevard, Norfolk, VA 23502 or E-mail: PRA\_Disputes@portfoliorecovery.com

**Credit Card Payments** - Third party vendors may charge a transaction fee for processing payments made by credit card; however, PRA does not charge or accept any fees. Please discuss this option with our staff if you have any questions.

#### **PRIVACY NOTICE**

We collect certain personal information about you from the following sources: (a) information we receive from you; (b) information about your transactions with our affiliates, others, or us; (c) information we receive from consumer reporting agencies. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic information about you to those employees and entities that need to know that information in order to collect your account. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**This letter is from a debt collector and is an attempt to collect a debt.  
Any information obtained will be used for that purpose.**

**Quality Service Specialists available Mon. - Fri. 8 AM to 5 PM (EST)**

Not happy with the way you were treated? Our company strives to provide professional and courteous service to all our customers. Contact one of our staff to discuss issues related to our quality of service to you by phone at (866) 925-7109 or by email at [qualityservice@portfoliorecovery.com](mailto:qualityservice@portfoliorecovery.com).

U0185082-47M2-3